HIGH COURT OF UTTARANCHAL AT NAINITAL

(Court's order whether the case is or not approved for reporting)

(Chapter VIII Rule 32 (2) (b)

Description of the case.

WPMS No. 939 of 2003

Shashi Kant and others
Vs

Deputy Director Haridwar & others

Approved for reporting

_____

~~Not approved for reporting~~

Date of decision 26.07.06

Initial of Judge

IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL
WRIT PETITION NO. 939 (MS) OF 2003

1. Shashi Kant s/o Sri Gaje Singh
2. Munesh Kumar s/o Sri Gaje Singh
Village nanheda Anandpur, Pargana Bhagwanpur,
Tehsil Roorkee, District Haridwar..... Petitioner.

Versus

1. District Deputy Director of Consoliation/ Collector Haridwar, District Haridwar
2. Consolidation Officer, Roorkee
3. Titu s/o Sri Sewa ram
4. Nitu s/o Sri Sewa Ram, both residents of village Anandpur, Pargana Bhagwanpur, Tehsil Roorkee, District Haridwar

.....Respondents.

Sri Lokpal Singh counsel for the petitioners
Sri Sharad Sharma Advocate for the respondents

Dated: 26.07.2006

Hon'ble Rajesh Tandon, J.

Heard Sri Lokpal Singh counsel for the petitioners and Sri Sharad Sharma counsel for the respondents no. 3 and 4 and Standing Counsel for respondents no. 1 and 2.

By the present writ petition, the petitioners have prayed for a writ of certiorari quashing the impugned order dated 14.5.2002 and 6.9.2003 passed by the respondent no. 2 and 1 respectively.

Briefly stated a restoration application has been filed by respondents no. 3 and 4 before the Consolidation Officer, Roorkee for setting aside the order dated 25.7.97 in the case No. 3032 Ram Singh and others vs. State. Order was passed on 14.5.2002 restoring the case on its original number and date was fixed for hearing. Against that order a revision has been filed.

It is well settled law that the dispute should be decided after giving ample opportunities to the parties to contest the case.

In ***N Balakrishnan Vs. M. Krishnamurthy, 1998 S.C.F.B. and Rent Cases Pages 427,*** It has been held that law of limitation is founded in public policy on *'the maxim of interest reipublicae up sit finis litium' i.e. fal the general welfare,* it has been held as under:-

> *"The primary function of a Court is to adjudicate the dispute between the parties and to advance substantial justice. Time limit fixed for approaching the Court in different situations is not because on the expiry of such time a bad cause would transform into a good cause."*
>
> *"Rules of limitation are not meant to destroy the right of parties. They are meant to see that parties do not resort to dilatory tactics, but seek their remedy promptly. The object of providing a legal remedy is to repair the damage caused by reason of legal injury. Law of limitation fixes a lifespan for such legal remedy for the redress of the legal injury so suffered. Time is precious and the wasted time would never revisit. During efflux of time newer cause would sprout up necessitating newer persons to seek legal remedy by approaching the Courts. So a life spen must be fixed for each remedy. Unending period for launching the remedy may lead to unending uncertainty and consequential anarchy. Law of limitation is thus founded on public policy. It is enshrined in the maxim interest reipublicae up sit finis litium (it is for the general welfare that a*

period be put to litigation). Rules of limitation are not meant to destroy the right of the parties. They are meant to see that parties do not resort to dilatory tactics but seek their remedy promptly. The idea is that every legal remedy must be kept alive for a legislatively fixed period of time".

"It must be remembered that in every case of delay there can be some lapse on the part of the litigant concerned. That alone is not enough to turn down his plea and to shut the door against him. If the explanation does not smack of mala fides or it is not put-forth as part of a dilatory strategy the Court must show utmost consideration to the suitor. But when there is reasonable ground to think that the delay was occasioned by the party deliberately to gain time then the Court should lean against acceptance of the explanation".

Relying upon the cases of ***R.V. Camborne Justices All England Law Reports (2) 850,*** it has been held in ***International Airports Authority of India Vs. K.D. Bali (1988) 2 SCC 360*** as under:-

"While indorsing and fully maintaining the integrity of the principle 'justice should not only be done, but should manifestly be seen to be done', it is important to remember that the principle should not be done than it should in fact be done."

Law Lexicon defines 'justice' as under:-

"Justitia est constans et perpetua voluntas just suum cuique tribuendi: justice is the constant and perpetual disposition or will of giving to every man his right"

In all the aforesaid cases, the Apex Court has observed that the hearing on the lis being mandatory, one should not be deprived of hearing the matter on merits.

In view of above, the writ petition lacks merit and deserves to be dismissed.

Accordingly, writ petition is dismissed. No order as to costs.

(Rajesh Tandon, J.)

26.07.2006

*Dhyani